



to discharges into so-called “isolated waters” that fall outside of the jurisdiction of the Clean Water Act.⁹

The North Carolina Department of Environmental and Natural Resources (NCDENR) Division of Water Quality (DWQ) administers the §401 program. Authorized activities and exemptions are listed in the regulations. State regulations also describe the required application process, public notice and public hearing procedures, and application review and decision-making. Finally, the state has adopted its own mitigation requirements for authorized impacts.¹⁰

Under the federal Coastal Zone Management Act and the state Coastal Area Management Act, NCDENR’s Division of Coastal Management (DCM) is the primary authority for state coastal resources, including wetlands. DCM issues permits for regulated activities and performs consistency calls on all federal permits issued in the North Carolina’s 20 coastal counties.

2. State regulation of buffers.

With a goal of maintaining nutrient reduction functions, North Carolina has adopted the Nutrient Offset Program for the Neuse and Tar-Pamlico river basins and rules protecting riparian buffers within the Neuse, Catawba, Tar-Pamlico river basins and a portion of the Cape Fear.

The Nutrient Offset Program mandates nutrient reduction projects to offset exports related primarily to development activities in the Neuse and Tar-Pamlico River Basins, and along with the Buffer Rules are regulated by NCDENR’s DWQ, although local governments that have been determined to meet state criteria may also assume authority to implement the buffer rules within their jurisdictions.

The Buffer Rules are designed to protect and maintain buffers for all areas within 50 feet of intermittent or perennial streams, lakes, ponds, or estuaries. Ditches, ephemeral streams, and wetlands are not jurisdictional under the state buffer rules.¹¹ Designated buffer areas are divided into two zones: Zone One, the inner 30 feet, is to remain undisturbed (with some exceptions); Zone Two, the outer 20 feet, must remain vegetated (with some exceptions). Specific activities are identified in the rule as “exempt,” “allowable,” “allowable with mitigation,” or “prohibited.”¹² Buffer

⁹ N.C. ADMIN. CODE tit.15A § 02H.1301.

¹⁰ See N.C. ADMIN. CODE tit.15A §§ 02B and 02H.

¹¹ N.C. ADMIN. CODE tit.15A § 02B.0233.

¹² Examples of “exempt” activities include driveway and utility crossings of certain sizes through Zone One, and grading and re-vegetation in Zone Two. “Allowable” and “allowable with mitigation” activities require review by the division and include activities such as new ponds in drainage ways and water crossings.